

904406-004

Recorded in Official Records, Solano County

Skip Thomson
Assessor/Recorder

4/23/2004
8:00 AM
AR21
41

RECORDING REQUESTED BY:

Qualified Investment Opportunities, Inc.
P.O. Box 5997
Vallejo, CA 94591

03 First American Title Co

Doc#: 200400051527



Titles:	1	Pages:	15
Fees			94.00
Taxes			0.00
Other			0.00
PAID			\$94.00

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 1
8800 Cal Center Drive
Sacramento, California 95814
Attention: Mr. Anthony J. Landis, Chief
Office of Military Facilities

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Parcel B of Map No. 02-0003, filed in the Office of the Recorder of Solano County,
State of California, May 19, 2003, Book 44, pages 46-49

Investigation Area A3, Former Mare Island Naval Shipyard
Eastern Early Transfer Parcel
Vallejo, California

This Covenant and Agreement ("Covenant") is made by and between Qualified Investment Opportunities, Inc., a Nevada corporation ("Covenantor"), the current owner of Parcel B of Map No. 02-0003, filed in the Office of the Recorder of Solano County, State of California, May 19, 2003, Book 44, pages 46-49, situated in Vallejo, County of Solano, State of California, depicted in Exhibit "A", attached hereto and incorporated herein by this reference (the "Parcel"), and the California Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code Section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471(c) and H&SC section 25355.5 that the use of the Parcel be restricted as set forth in this Covenant. The Parties further intend that, solely with regard to a portion of the Parcel, more particularly depicted and described in Exhibits "B" and "C", attached hereto and

incorporated herein by this reference (the "Property"), the provisions of this Covenant also be for the benefit of, and enforceable by, the United States Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I – STATEMENT OF FACTS

1.01 The Parcel, totaling approximately 6.74 acres, is located on the developed eastern side of Mare Island and comprises a portion of the area now generally known as the Eastern Early Transfer Parcel of Mare Island ("EETP"), in Vallejo, County of Solano, State of California. The Property, totaling approximately 0.47 acres, is located on a portion of the Parcel, depicted in Exhibit "D", attached hereto and incorporated herein by this reference.

1.02 At the time of the recordation of this Covenant, the Parcel is subject to the terms of the Covenant to Restrict Use of Property, Environmental Restrictions, Recorder's Serial No. 2003-9079 ("A3 Covenant"), recorded in the Office of the Recorder of Solano County, California, on January 21, 2003. The A3 Covenant applies to a portion of the EETP that includes the Parcel, as described further herein. Following the recordation of this Covenant, a release of the A3 Covenant will be recorded, solely as it pertains to the Parcel. This Covenant will replace the A3 Covenant on the Parcel. This Covenant establishes a prohibition on sensitive land uses on the entire Parcel that is identical to that contained in the A3 Covenant. However, unlike the A3 Covenant, this Covenant is also for the benefit of, and enforceable by, the U.S. EPA as a third party beneficiary, solely with regard to the Property. This is being done to satisfy certain U.S. EPA regulatory closure requirements, as further described herein.

1.03 On April 16, 2001 the ownership of the EETP, which included the Parcel, was transferred from the United States Department of the Navy ("Navy") to the City of Vallejo ("City"), and then immediately on to Lennar Mare Island, LLC, a California corporation ("LMI"). On March 10, 2004 Diaz & Sons Construction & Development, Inc., a California corporation ("Diaz") purchased a fee simple interest in the Parcel from LMI. On March 10, 2004, Diaz transferred ownership of the Parcel to the Covenantor.

1.04 LMI, the Department, and the City entered into a Consent Agreement on April 16, 2001 ("Consent Agreement"). The Consent Agreement establishes the process and timetable for the completion of the response and corrective actions at specified portions of the EETP. The Consent Agreement is on file with the Department. The Consent Agreement subdivides the EETP into eight (8) Investigation Areas. The Parcel is located within one of these Investigation Areas—Investigation Area A3. The *Final Investigation Area A3 Remedial Action Plan for Investigation Area A3*, dated November 21, 2002 ("A3 RAP") provides that a deed restriction be required as part of the site remediation, because certain investigation and remediation activities at various sites contaminated with polychlorinated biphenyls ("PCBs") in Investigation Area A3 were remediated to concentrations requiring restriction to commercial or industrial land uses.

1.05 As detailed in the Investigation Area A3 RAP, a portion of the subsurface soils in Investigation Area A3 contains PCBs, a hazardous substance as defined in H&SC section 25316. The PCB concentrations are in the range of 0.22 to 3 parts per million ("ppm"), which are above the screening level for unrestricted use in soil. The Department concluded that use of the portion of Investigation Area A3 addressed by the A3 RAP, including the Parcel, for residences, hospitals, schools for persons under the age of 18, or day care centers would entail an unacceptable risk. The Department further concluded that the portion of Investigation Area A3 addressed by the A3 RAP, including the Parcel, as remediated, and subject to the Restrictions set forth in this Covenant, does not present an unacceptable threat to human health or the environment.

1.06 The Toxic Substances Control Act ("TSCA") Complaint/Consent Agreement and Final Order for the Former Mare Island Naval Shipyard ("CA/FO") dated December 20, 2001 establishes U.S. EPA regulatory closure requirements for PCBs on the EETP. The Navy is the Respondent in the CA/FO, and the agreement settles allegations made by U.S. EPA that the Navy violated Section 15 of TSCA by failing to comply with the PCB disposal requirements of 40 Code of Federal Regulations ("CFR") Sections 761.61(a) & (c) on the Former Mare Island Naval Station. LMI is an "Intervenor" in the CA/FO because LMI has assumed certain responsibilities for, among other things, TSCA compliance and regulatory closure on the EETP.

1.07 The Property contains residual amounts of PCBs in soils where three former transformer pads were located outside of the eastern wall of the building on the Parcel generally known as Building 751. These PCB sites are designated Building 751 AL#02, Building 751 AL#03, and Building 751 AL#04. Following clean up activities at these three PCB sites, the maximum remaining residual PCB concentrations in subsurface soils are as follows; 2 ppm at Building 751 AL#02; 3 ppm at Building 751 AL#03; and 2 ppm at Building 751 AL#04, as depicted in Exhibit "E", attached hereto and incorporated herein by this reference. The estimated potential cancer risks associated with exposure to soils at the three Building 751 sites range from 1×10^{-6} to 3×10^{-6} .

1.08 An evaluation supporting risk-based closure of the three former transformer pads located on the Property was provided to U.S. EPA. This human health risk evaluation demonstrates that the Property, with the currently existing PCB residuals in soils, is appropriate for commercial and industrial land uses but not unrestricted land uses. The risk assessment provided to U.S. EPA is the same as that provided to the Department in support of the A3 RAP. The full risk evaluation for the three sites is found in Appendix B of the *Final Investigation Area A3 Remedial Action Plan* dated November 21, 2002 ("A3 RAP"), on file with the Department and U.S. EPA.

1.09 Pursuant to Paragraph 6(a) of the CA/FO, no further action is needed with respect to PCB contamination at Building 751 AL#02, Building 751 AL#03, and Building 751 AL#04, provided that sensitive uses are prohibited on the Property, as established herein by this Covenant.

ARTICLE II – DEFINITIONS

2.01 Department. “Department” means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. “Owner” means the Covenantor and shall include the Covenantor’s successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.03 Occupant. “Occupant” means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Effective Date. “Effective date” means the date upon which this Covenant was recorded in the Office of the Solano County Recorder.

2.05 U.S. EPA. “U.S. EPA” means the United States Environmental Protection Agency, and includes its successor agencies, if any.

2.06 Parcel. “Parcel” means Parcel B of Map No. 02-0003, filed in the Office of the Recorder of Solano County, State of California, May 19, 2003, Book 44, pages 46-49, as depicted in Exhibit “A”.

2.07 Property. “Property” means a portion of the Parcel, as more particularly depicted and described in Exhibits “B” and “C”.

ARTICLE III – GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Restrictions”), subject to which the Parcel and every portion thereof shall be improved, held, used occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Section 25355.5 (a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Parcel; (c) is for the benefit of, and is enforceable by the Department, and solely with regard to the Property, the U.S. EPA as a third party beneficiary, and (d) is imposed upon the entire Parcel unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners, Occupants and Lessees. Pursuant to H&SC section 25355.5 (a)(1)(C), this Covenant binds all owners of the Parcel, their heirs, successors, and assignee, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Parcel are expressly bound hereby for the benefit of the Department, and solely with regard to the Property, the U.S. EPA as a third party beneficiary.

3.03 Written Notification of the Presence of Hazardous Substances. Prior to the sale, lease, or sublease of the Parcel, or any portion thereof, the Owner, Occupant, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that

hazardous substances are located on or beneath the Parcel, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into for any portion of the Parcel on or after the Effective Date of this Covenant.

3.05 Conveyance of Property. The Owner shall provide notice to the Department and to U.S. EPA not later than thirty (30) days after any conveyance or other transfer of any ownership interest in the property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance or transfer, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV – ENVIRONMENTAL RESTRICTIONS

4.01 Prohibited Uses. The Parcel shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years.
- (d) A day care center for children.

4.02 Management of Property in Compliance with TSCA. Management and disposal of TSCA-regulated PCBs on the Property shall be in compliance with 40 C.F.R. Section 761.61.

4.03 Access. The Department shall have reasonable right of entry and access to the Parcel for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect public health or safety or the environment. U.S. EPA shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the U.S. EPA to protect public health or safety or the environment.

ARTICLE V – ENFORCEMENT

5.01 Enforcement. With regard to any and all of the Parcel, including but not limited to the Property, failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant. Violation of this Covenant shall be grounds for the Department to seek or file enforcement actions as provided by law. Solely with

regard to the Property, failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for U.S. EPA to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant. Also solely with regard to the Property, violation of this Covenant shall be grounds for U.S. EPA to seek or file enforcement actions as provided by law.

ARTICLE VI – VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. Notwithstanding the final decision made pursuant to H&SC section 25233, Covenantor, solely with regard to the Property, shall also obtain prior written approval by U.S. EPA before implementation of any action taken pursuant to the variance.

6.02 Termination. The Owner, or with the Owner's consent, any lessee, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Parcel. Such application shall be made in accordance with H&SC Section 25234. Notwithstanding the final decision made pursuant to H&SC section 25234, Covenantor, solely with regard to the Property, shall also obtain prior written approval by U.S. EPA before termination.

6.03 Term. Unless ended or modified in accordance with the paragraphs above; by law; or by the Department in the exercise of its discretion, except only after review and prior written concurrence by U.S. EPA as it applies to the Property, this Covenant shall continue in effect in perpetuity.

ARTICLE VII – MISCELLANEOUS

7.01 No Dedication or Taking Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Parcel, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under federal or state law.

7.02 Department References. All references to the Department include successor agencies/departments or any other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with Exhibits "A", "B", "C", "D", and "E", in the County of Solano within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested as follows:

To Owner:

Qualified Investment Opportunity, Inc.
P.O. Box 5997
Vallejo, CA 94591

To Department:

Department of Toxic Substances Control
Region 1
8800 Cal Center Drive
Sacramento, California 95814
Attention: Mr. Anthony J. Landis, Chief
Office of Military Facilities

To U.S. EPA:

U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attention: Max Weintraub
PCB Coordinator (CMD-4-2)

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.06 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.09 Statutory References. All statutory references include successor provisions.

7.10 Counterparts. This Covenant may be executed in counterparts.

7.10 IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR: QUALIFIED INVESTMENT
OPPORTUNITIES, INC.

By: [Signature]
Name: John Dobles
Title: CEO
Date: 4-8-04

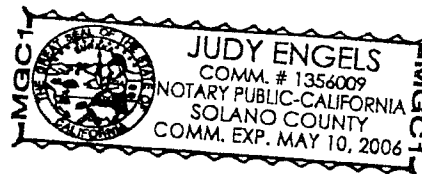
STATE OF CALIFORNIA)
COUNTY OF SOLANO)

On this 8 day of APRIL, in the year 2004, before me
JUDY ENGELS, personally appeared
John Dobles, personally known to me

(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Judy Engels



THE STATE OF CALIFORNIA ACTING BY AND
THROUGH THE DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: Anthony J. Landis
Name: ANTHONY J. LANDIS
Title: BRANCH CHIEF
Date: 4-19-04

STATE OF CALIFORNIA)
COUNTY OF Sacramento)

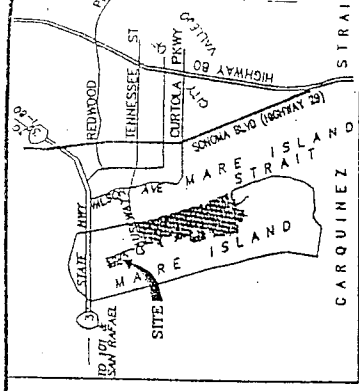
On this 19th day of April, in the year 2004, before me
Kathleen Duncan, personally appeared
Anthony J. Landis, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

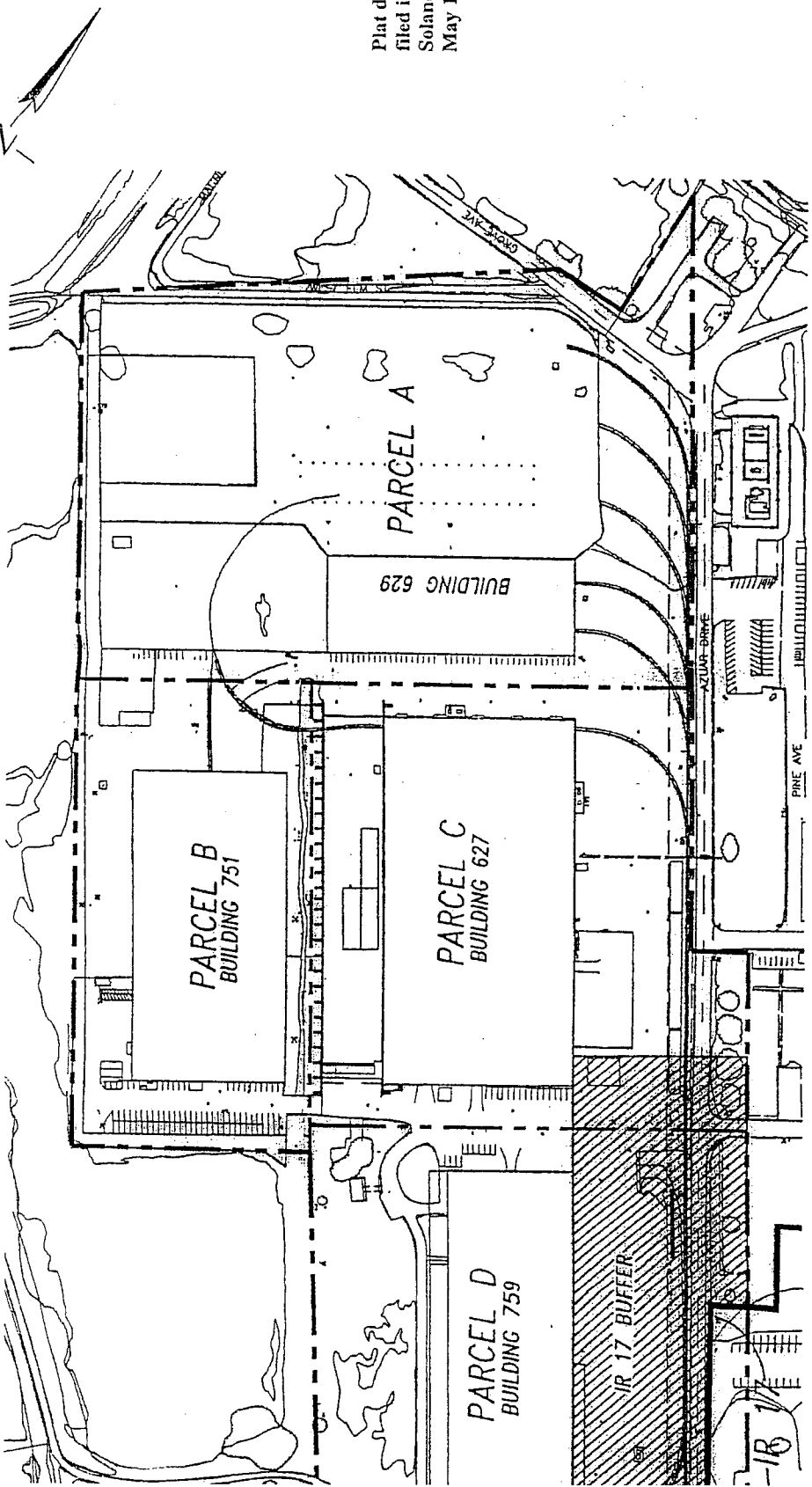
Kathleen Duncan





SITE SKETCH
NOT TO SCALE

Exhibit A
Plat depicting Parcel B of Map No. 02-003,
filed in the Office of the Recorder of
Solano County, State of California
May 19, 2003, Book 44, Pages 46-49



DATE: APRIL 1, 2003

\\2000\0008077\TEXT-PAR-MAP\02EX-CCR LAYOUT: IR-AREA

CHAUDHARY & ASSOCIATES, INC.
ENGINEERS SURVEYORS INSPECTORS
851 NAPA VALLEY CORPORATE WAY, SUITE G
NAPA, CALIFORNIA 94558
TEL. (707) 255-5021 FAX. (707) 255-5021 WWW.CHAUDHARY.COM

OWNER/APPLICANT
LENNAR MARE ISLAND, LLC
900 WALNUT AVE., QUARTERS D
MARE ISLAND, CA 94592
TEL. (707) 562-4005

PLAT DEPICTING

**NORTH ISLAND LIGHT INDUSTRIAL PARCELS
WITH IR 17 OVERLAY**

CITY OF VALLEJO

MARE ISLAND

CALIFORNIA

PLAT
1
OF 1

Lennar Mare Island, LLC
A portion of A.P.N. 066-010-001
Building 751, Environmental Restriction Area

Exhibit B
Legal Description

All that real property situate on the lands commonly known as Mare Island Naval Shipyard, in the City of Vallejo, County of Solano, State of California, described as follows:

Being a portion of the "Primary Eastern Early Transfer Parcel", described as "Parcel No. 1" in the Grant Deed to Lennar Mare Island, LLC, a California limited liability company, which was recorded on March 26, 2002, Series No. 2002-37966, Solano County Official Records, more particularly described as follows:

Commencing at a 2-1/2" aluminum disk monument in concrete, stamped "Mare Island Control Point 3, McGill-Martin-Self, Orinda CA", as shown on that certain Record of Survey filed November 14, 1996, in Book 21 of Surveys at Page 94 of Official Records of Solano County. Having established grid coordinates of North 1,803,802.7349 feet and East 6,478,152.2326 feet, referenced to the California Coordinate System of 1983, Zone 2 as given in that particular report entitled, "Summary Report, Horizontal Control Network, Mare Island Naval Shipyard, Vallejo, California, MMS Job #1587, McGill Martin Self, Inc.";

thence, South 08°02'54" West, 989.31 feet to the most northerly corner of Building No. 751,
the POINT OF BEGINNING;

thence, along the northeasterly extension of the northwesterly wall of said Building,
North 54°20'30" East, 40.00 feet;

thence, parallel with the northeasterly wall of said Building, South 35°39'30" East, 510.00 feet to
northeasterly extension of the southeasterly wall of said Building;

thence southwesterly, along said northeasterly extension, South 54°20'30" West, 40.00 feet to
the most easterly corner of said Building;

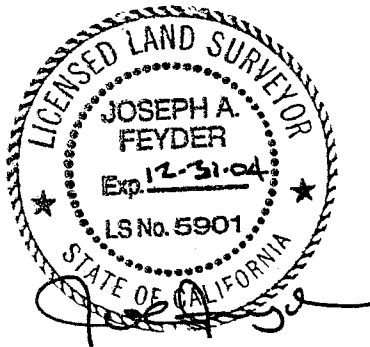
thence, along northeasterly wall of said Building, North 35°39'30" West, 510.00 feet to the point of BEGINNING.

Containing an area of 0.468 acre or 20,403 square feet, more or less, at ground level.

The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2. Distances shown are grid distances. To obtain ground distances multiply grid distances by 1.00006210.

The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

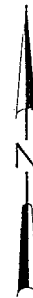
Date: March 31, 2004



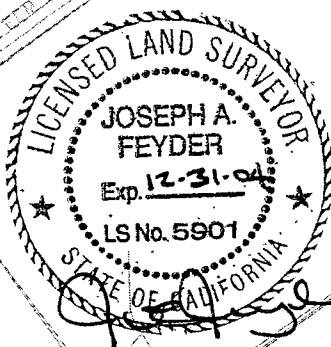
ABANDONED ROADS

EXHIBIT C

Mare Island Control Point 3



0' 100' 200' 300'



P.O.B.

Bldg 751

1. N 54°20'30" E 40.00'
2. S 35°39'30" E 510.00'
3. S 54°20'30" W 40.00'
4. N 35°39'30" W 510.00'

Building 751, Environmental Restriction Area

PLAT OF REAL PROPERTY FOR
LENNAR MARE ISLAND, LLC

SCALE: 1"=200'

DRAWN BY: JF

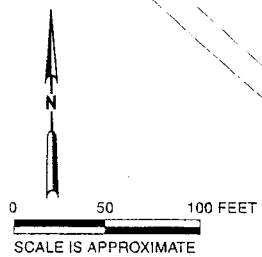
DATE: March 31, 2004

CHECKED BY: DD

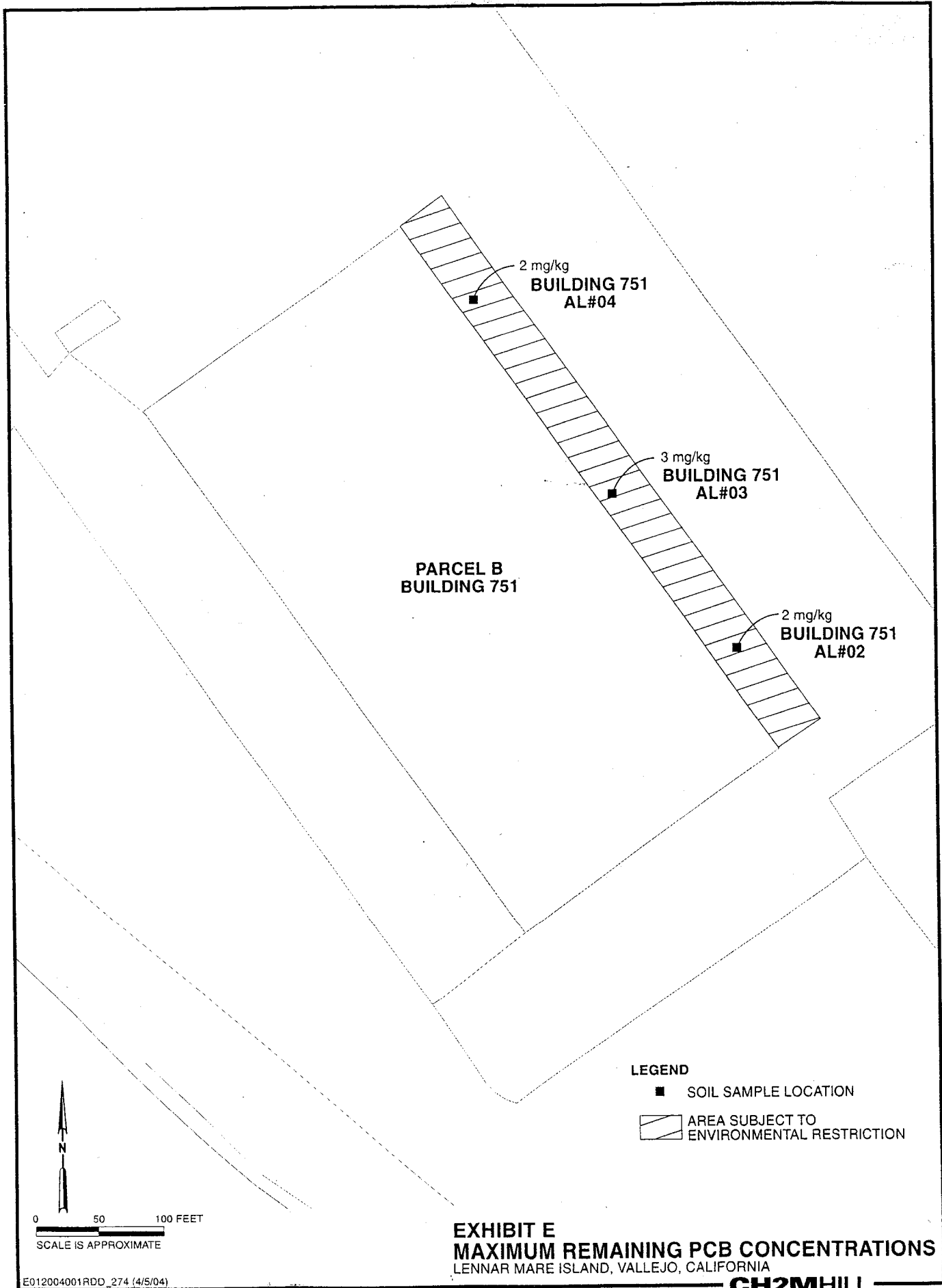
CH2MHILL

**PARCEL B
BUILDING 751**

 **AREA SUBJECT TO
ENVIRONMENTAL RESTRICTION**



**EXHIBIT D
AREA SUBJECT TO
ENVIRONMENTAL RESTRICTION
LENNAR MARE ISLAND, VALLEJO, CALIFORNIA**
CH2MHILL



E012004001RDD_274 (4/5/04)

END OF
DOCUMENT